REMARKS

[01] NON-STATUTORY SUBJECT MATTER

[02] Items 5-6 of the Office Action of 2008-Oct-22 reject Claims 6 and 8-10 for statutory status issues. Claim 6 has been amended in accordance with the Examiner's helpful suggestion to overcome these rejections.

[03] **OBVIOUSNESS OF CLAIMS 1 and 3-5.**

[04] **Traversal**

[05] Item 8 of the Office Action rejects Claims 1 and 3-5 as being obvious over Moshir as modified in accordance with the teachings of Sakanishi. These rejections are traversed.

[06] **Prioritizing Updates**

[07] Claim 1 requires an update site that prioritizes updates for an application at least in part as a function of usage data.   The Office Action recognizes that Moshir does not disclose this limitation, and thus relies on Sakanishi for a disclosure of this limitation. However, Sakanishi does not disclose this limitation.

[08] The Office Action cites Sakanishi, Fig. 7, column 8, lines 29-42 for a disclosure of the required prioritizing. However, Sakanishi, Fig. 7 and column 8, lines 29-42 do not disclose or suggest either usage data or prioritizing.

[09] The Office Action also cites Sakanishi, Fig. 12, column 9, line 56 to column 10, line 10 for a disclosure of the prioritizing limitation. However, Fig. 12 and related text do not disclose prioritizing updates for an application at least in part as a function of usage data. The text

mentions "specifying a priority level . . . of a controlled system", but the controlled system is not an application.

[10]   The Office Action further cites Sakanishi, Fig. 18, column 11, line 42 to column 12, line 46 for a disclosure of the claimed prioritizing. However, Fig. 18 and the related text dos not mention prioritizing or usage data. They do mention a list of pieces of software to be affected by patching and a list of pieces of software already installed. They do disclose making decisions by comparing these lists; however, there is no teaching that the list items have been prioritized at all, let alone as a function of usage data.

[11]   After reviewing all the figures and text relied on by the Office Action as evidence that Sakanishi discloses prioritizing updates for an application at least in part as a function of usage data, shows the Office Action has failed to establish that Sakanishi discloses this limitation. Since it is agreed that Moshir does not disclose this limitation, it is apparent that no modification of Moshir in accordance with the teachings of Sakanishi would meet this claim limitation. **Since the Office Action has failed to establish that a modification of Moshir in accordance with the teachings of Sakanishi would meet the requirements of Claim 1, the rejections of Claim 1 and of Claims 3-5 (which depend from Claim 1) should be withdrawn.**

[12]   OBVIOUSNESS OF CLAIMS 6 and 8-10.

[13]   Traversal

[14]   Item 8 of the Office Action rejects Claims 6 and 8-10 as being obvious over Moshir as modified in accordance with the teachings of Sakanishi. These rejections are traversed.

[15]   Update Prioritizer

[16]   Claim 6 requires an update prioritizer for prioritizing updates available for said version at least in part as a function of said evaluated usage data.   The Office Action recognizes that Moshir does not disclose this limitation, and thus relies on Sakanishi for a disclosure of this limitation, cited the same figures and textual information discussed above with respect to Claim 1. As explained above, these figures and text passages do not disclosure prioritizing based on usage data. It is apparent that no modification of Moshir in accordance with the teachings of Sakanishi would yield the required prioritizer . **Since the Office Action has failed to establish that a modification of Moshir in accordance with the teachings of Sakanishi would meet the requirements of Claim 6, the rejections of Claim 6 and of Claims 8-10 (which depend from Claim 6) should be withdrawn.**

[17]   OTHER ERRORS OF INTERPRETATION

[18]   The foregoing traversals should be dispositive. However, there are other problems with the rejections. Briefly, Sakanishi does not disclose usage data, a prioritized list (Fig. 25 does not disclose a list, Fig. 26 discloses a list, but it does not appear to be prioritized), or a browser (as required by Claim 6).   While Moshir, paragraph [0149] discusses critical updates to operating systems, Mosher does not disclosure or suggest that "criticality" is determined as a function of usage data. Furthermore, Moshir does not disclose prioritizing updates to applications for any reason, let alone based on usage data. The Office Action does not identify which application disclosed by Moshir corresponds to the claimed application; in particular, the passages relied on by the Office Action for a disclosure of the claimed "launching an application" do not mention an application. Also, while the Office Action asserts that Moshir's computer system 500 accesses update site server 220 accesses target computer 500, Moshir does not disclose this

as computer system 500 and update server 220 belong to different embodiments. Finally, Moshir does not disclose that target computer 500 is a user system (e.g., as opposed to a server").

[19] An underlying problem is that assertions that a claim element can be found in a prior art reference are not always specific. While the Office Action is clear that the claimed user system reads on Moshir's target computer 500, Applicants cannot identify what element of Moshir corresponds to the claimed application. Instead, Applicants are referred to a series of paragraphs that do not disclose an application. Elsewhere, text and figures cited in support of an assertion do not appear to support that assertion. Accordingly, Applicants respectfully request that the Examiner, if the above rejections are to be maintained, be more specific about mapping claim elements to prior-art elements.
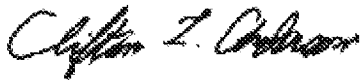
[20] INVITATION

[21] If the Examiner believes that a phone discussion would advance prosecution in this application, the Examiner is welcome to call the signing attorney to discuss this case at the phone number listed below the signature. If there is no answer, any message will be returned within one business day.

[22] CONCLUSION

[23] The rejections for non-statutory subject matter are overcome by an amendment in accordance with the Examiner's suggestion. The rejections for obviousness are traversed as it is agreed that the primary reference does not disclose a claim limitation and it is demonstrated that none of the secondary-reference passages relied on as disclosure for that element in fact discloses that claim limitation. Accordingly, it is respectfully submitted that the present application is in condition for allowance, which allowance is respectfully requested.

Respectfully submitted

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